

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO.</b>
	)	
<b>FMC CORPORATION and BAE SYSTEMS</b>	)	
<b>LAND AND ARMAMENTS, LP,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

Plaintiff, the United States of America, by the authority of the Attorney General of the United States of America, acting at the request of the United States Navy (the “Navy”) and the United States Environmental Protection Agency (the “EPA”), by and through its undersigned attorneys, files this complaint and alleges as follows:

1. This is a civil action, brought against the FMC Corporation (“FMC”) and BAE Systems Land and Armaments, LP (“BAE Systems”) (collectively, “Defendants”), under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601 - 9675. The Navy and EPA responded to releases and threatened releases of hazardous substances at the Naval Industrial Reserve Ordnance Plant in Fridley, Anoka County, Minnesota (the “NIROP”) and the adjacent areas to which such hazardous substances have come to be located (collectively, the “NIROP Site”). Plaintiff seeks to recover response costs incurred, and to obtain a declaratory judgment as to liability for response costs to be incurred, for

responding to the releases and threatened releases of hazardous substances at and from the NIROP Site.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 (federal question); 1345 (United States as plaintiff); and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b) (jurisdiction; venue).

3. Venue is proper in the District of Minnesota pursuant to 28 U.S.C. §§ 103 (District of Minnesota, Fourth Division includes Anoka County) and § 1391(b) (venue, generally), and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b) (jurisdiction; venue), because the releases of hazardous substances at or from the NIROP Site occurred in this district and because the events or omissions giving rise to the claims herein occurred in this district.

### **PARTIES**

4. Defendant FMC is incorporated under the laws of the State of Delaware and does business and has done business during relevant times in the State of Minnesota. FMC is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. Defendant BAE Systems is a limited partnership and does business and has done business during relevant times in the State of Minnesota. BAE Systems is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. The Navy is authorized to perform response actions under CERCLA on land under the Navy's jurisdiction, custody, or control, as well as on other lands to which releases from said lands have come to be located. Executive Order 12,580, §2(d) (January 23, 1987). The Navy has conducted response actions at the NIROP Site pursuant to its response authorities under Section 104 of CERCLA, 42 U.S.C. §9604, and under the Defense Environmental

Restoration Program, 10 U.S.C. §§2701-2710. Implementation of these authorities is further defined by a Federal Facility Agreement (“FFA”) under Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(2), among the Navy, EPA and the State of Minnesota, effective March 1991. At times relevant to this action, from approximately 1947 to 2004, the Navy owned, and was the federal land manager with jurisdiction over, the NIROP.

7. Authority to bring this action on behalf of the United States is vested in the Department of Justice pursuant to 28 U.S.C. §§ 516 (conduct of litigation reserved to Department of Justice), and 519 (supervision of litigation), and Executive Order 12,580 § 6 (January 23, 1987).

### **GENERAL ALLEGATIONS**

8. The NIROP and NIROP Site are located in Fridley, Anoka County, Minnesota, which is within the metropolitan area of Minneapolis/St. Paul, Minnesota.

9. The NIROP consists of the northernmost major portion of a 36-acre manufacturing building, equipment in that portion of the building, the land underlying that portion of the building, and land to the north of that building. The NIROP is situated approximately 800 ft. east of the Mississippi River. Located between the NIROP and the Mississippi River is the 60-acre Anoka County Riverfront Regional Park, a recreational facility. From 1941 to date, the NIROP has been owned and/or operated by a number of entities under a series of facilities and production contracts with the Navy for the design and manufacture of naval weapons hardware systems.

10. FMC’s predecessor, Northern Pump Company (“Northern Pump”), owned the land that comprised the NIROP from approximately 1941 to 1947, when the Navy purchased the

land underlying the NIROP building and the land to the north of the building. The Navy owned the NIROP and a substantial portion of the equipment in the NIROP during the time period from 1941 to 2004. In 2004, the Navy sold the NIROP to United Defense, LP ("UDLP"), which in turn conveyed it to BAE Systems in 2005 as part of an acquisition of UDLP by BAE Systems.

11. From approximately 1941 to 1964, Northern Pump and its subsidiary, Northern Ordnance, Inc. ("Northern Ordnance"), operated the NIROP. In or about 1964, FMC acquired certain assets of Northern Pump, including Northern Ordnance, and FMC assumed operation of NIROP for the Navy.

12. From approximately 1964 to 1994, FMC manufactured weapons hardware, *inter alia*, gun mounts, torpedo tubes and missile launching systems at the NIROP. From approximately 1964 to 1994, FMC directed the workings of, managed, or conducted the weapons hardware manufacturing operations at the NIROP, including operations related to the disposal of waste materials. At all times from 1964 through 1994, FMC was an "operator" of the NIROP, within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).

13. In or about 1994, FMC and Harsco Corporation ("Harsco") formed UDLP, which operated the NIROP until 1997. In or about 1997, FMC and Harsco sold UDLP to an entity of the Carlyle Group, at which time FMC and Harsco withdrew as UDLP partners in lieu of newly formed UDLP partnership entities, UDI, Inc. and UDLP Holdings Corporation. UDLP continued to operate the NIROP until 2005. Pursuant to an Offer of Purchase and Quitclaim Deed dated June 17, 2004, the Navy transferred ownership of the NIROP to UDLP.

14. Pursuant to Agreement and Plan of Merger, BAE Systems acquired UDI, Inc. and UDLP in 2005 and took over ownership and operation of the NIROP. In 2006, BAE Systems transferred ownership of the NIROP to ELT Minneapolis, LLP ("ELT"). BAE Systems

continued to operate a portion of the NIROP under a leaseback arrangement with ELT. From approximately 2005 to date, BAE Systems has been “owner” and/or “operator” of the NIROP, within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).

15. FMC generated waste materials at the NIROP from its weapons hardware manufacturing processes, including but not limited to, lubricants, waste oils, paint sludges and chlorinated hydrocarbon solvents. These waste materials contained “hazardous substances,” including but not limited to trichloroethylene (“TCE”), within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4.

16. During some or all of the time from approximately 1964 to 1994, FMC disposed of lubricants, waste oils, paint sludges and chlorinated solvents, generated from its weapons hardware manufacturing processes, in drywells, pits and trenches at the NIROP Site.

17. Hazardous substances have been discharged, deposited, injected, dumped, spilled, leaked, or placed into or on land or water at the NIROP Site so that such hazardous substances have entered the environment or been emitted into the air or discharged into any soils and waters, including surface waters and groundwaters.

18. There has been a "disposal" of hazardous substances at the NIROP Site, within the meaning of Section 101(29) of CERCLA, 42 U.S.C. § 9601(29).

19. There have been “releases”, as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), or threatened release, of hazardous substances, to soils, surface waters, and groundwaters at the NIROP Site.

20. Because hazardous substances have been released or otherwise come to be located at the NIROP Site, the NIROP Site is a "facility" within the meaning of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a).

21. The NIROP Site was placed on the federal facilities section of the CERCLA National Priorities List ("NPL") by EPA on or about November 21, 1989, 54 *Fed. Reg.* 48184. The NPL, established pursuant to section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and 40 C.F.R. Part 300, Appendix B, lists sites throughout the United States that, because of releases or threatened releases of hazardous substances, pose a significant threat to human health and the environment.

22. Since at least 1982, the Navy has selected and implemented multiple removal actions and remedial actions in response to the release or threatened release of hazardous substances at the NIROP Site. Since at least 1991, EPA has implemented response actions, including oversight of Navy response actions under the FFA, at the NIROP Site.

23. The response actions taken by the Navy and EPA at the NIROP Site are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300 *et seq.*

24. The United States has incurred costs of response actions at the NIROP Site within the meaning of Sections 101(23), (24) and (25) of CERCLA, 42 U.S.C. §§ 9601(23), (24) and (25), and will incur future costs for response actions at the NIROP Site.

25. As a result of responding to the releases or threatened releases of hazardous substances at or from the NIROP Site, the United States has incurred unreimbursed response costs, and prejudgment interest.

26. The United States will continue to incur response costs as a result of the releases or threatened releases of hazardous substances at or from the NIROP Site.

#### **CLAIM FOR RELIEF**

27. The allegations appearing in Paragraphs 1 through 26 above are realleged and incorporated herein by reference.

28. FMC is liable as a “person who at the time of disposal of any hazardous substance owned or operated” at the NIROP Site, pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

29. BAE Systems is liable as an “owner or operator” at the NIROP Site, pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

30. Pursuant to Section 107(a) of CERCLA, Defendants are liable for the “. . . costs of removal or remedial action incurred by the United States . . . not inconsistent with the national contingency plan.” 42 U.S.C. § 9607(a).

31. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are liable for response costs incurred by the United States for activities conducted at or in connection with the NIROP Site, including related oversight costs and related indirect, administrative, investigative, and enforcement costs.

32. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the United States is entitled to recover interest on the response costs it has incurred.

33. Pursuant to Section 113(g)(2) of CERCLA, 42, U.S.C. § 9613(g)(2), Defendants are liable with respect to the NIROP Site for a “declaratory judgment on liability for response costs . . . that will be binding on any subsequent action or actions to recover further response costs.”

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the United States of America, respectfully prays that this Court:

1. Award Plaintiff a judgment against the Defendants for response costs incurred in connection with the NIROP Site, plus interest;

2. Pursuant to Section 113(g)(2) of CERCLA, 42, U.S.C. § 9613(g)(2), enter a

declaratory judgment against the Defendants that they are liable for future response costs that the United States may incur in connection with the NIROP Site; and

3. Grant the United States such other relief as this Court may deem appropriate.

Respectfully submitted,

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